

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF PETITION OF TRACFONE )  
WIRELESS, INC. FOR DESIGNATION AS AN )  
ELIGIBLE TELECOMMUNICATIONS CARRIER IN )  
THE STATE OF INDIANA FOR THE LIMITED )  
PURPOSE OF OFFERING LIFELINE SERVICE TO )  
QUALIFIED HOUSEHOLDS )

CAUSE NO.41052-ETC-54

TRACFONE WIRELESS, INC. APPLICATION FOR A )  
CERTIFICATE OF TERRITORIAL AUTHORITY FOR )  
COMMUNICATIONS SERVICE PROVIDERS )

CAUSE NO. 43732

PREFILED TESTIMONY OF

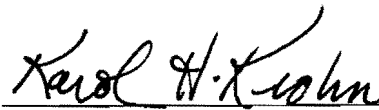
RONALD L. KEEN  
(REGARDING CTA APPLICATION)

ON BEHALF OF

THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

December 1, 2009

Respectfully submitted,



Karol H. Krohn, Atty. No. 5566-82  
Deputy Consumer Counselor

## **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **OUCS Prefiled Testimony of Ronald L. Keen** has been served upon the following counsel of record in the captioned proceeding by electronic service and/or by depositing a copy of same in the United States mail, first class postage prepaid, on December 1, 2009.

**GREENBERG TRAURIG, LLP**

Mitchell F. Brecher  
Debra McGuire Mercer  
[brecher@gtlaw.com](mailto:brecher@gtlaw.com)  
[mercercdm@gtlaw.com](mailto:mercercdm@gtlaw.com)

**BAMBERGER FOREMAN OSWALD &  
HAHN, LLP**

Clayton C. Miller  
[cmiller@bamberger.com](mailto:cmiller@bamberger.com)

**BAKERS & DANIELS, LLP**

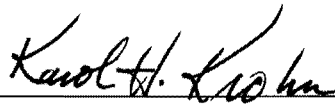
[Brent.taylor@bakerd.com](mailto:Brent.taylor@bakerd.com)

**BINGHAM MCHALE, LLP**

David T. McGimpsey  
Gregory A. Neibarger  
Casey M. Holsapple  
[dmcgimpsey@binghammchale.com](mailto:dmcgimpsey@binghammchale.com)  
[gneibarger@binghammchale.com](mailto:gneibarger@binghammchale.com)  
[cholsapple@binghammchale.com](mailto:cholsapple@binghammchale.com)

**FROST BROWN TODD**

Robert L. Hartley  
[rhartley@fbtlaw.com](mailto:rhartley@fbtlaw.com)



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Karol H. Krohn, Atty. No. 5566-82  
Deputy Consumer Counselor

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**

115 West Washington Street  
Suite 1500 South  
Indianapolis, IN 46204  
[infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov)  
317/232-2494 – Phone  
317/232-5923 – Facsimile

**DIRECT TESTIMONY OF RONALD L. KEEN**  
**CAUSE NO. 43732**  
**TRACFONE WIRELESS, INC.**

**I. INTRODUCTION AND WITNESS QUALIFICATIONS**

1   **Q:   Please state your name and your business address.**

2   A:   My name is Ronald L. Keen. My business address is 115 West Washington  
3       Street, Suite 1500 South, Indianapolis, Indiana 46204.

4   **Q:   By whom and in what capacity are you employed?**

5   A:   I am currently employed by the Indiana Office of Utility Consumer Counselor  
6       ("OUCC") as a Senior Analyst within the Resource Planning, Emerging  
7       Technologies, and Telecommunications Division ("RPETT").

8   **Q:   Please describe your educational background and experience.**

9   A:   I hold a Masters Degree in Aeronautical Science from Embry-Riddle  
10       Aeronautical University and have completed coursework toward a Masters in  
11       Political Science. I also hold a Bachelors Degree in Management from Texas  
12       State University at San Marcos.

13       Hired by the OUCC in December 2001 as the Telecommunications Division  
14       Director, I've completed the regulatory studies program at Michigan State  
15       University sponsored by the National Association of Regulatory Utility  
16       Commissioners ("NARUC"), as well as a number of other utility-related  
17       courses, seminars, and conferences focused on telecommunications, broadband,

1 smart grid technology, and renewable energy resources.

2 Prior to working at the OUCC, I served in and retired from the United States Air  
3 Force, working primarily with terrestrial, atmospheric, and space-based  
4 communications systems and networks. I also worked for a number of years as  
5 a Community Planner on a facility populated with over 15,000 armed forces  
6 personnel and their families. In that capacity, I was directly responsible for a  
7 number of projects from design to completion, including those involving  
8 telecommunications, utility and fuel infrastructure. Other assignments during  
9 my career required me to work closely with utility providers provisioning  
10 service to critical infrastructure and facilities, including telecommunications  
11 networks. Additionally, I completed utility and telecommunications-related  
12 coursework, seminars, and training and was instrumentally involved in policy,  
13 protocol, and regulation development, as well as operational employment at all  
14 levels.

15 After retiring from the Air Force, I briefly worked as a Project Manager for  
16 Aeronautical Radio, Incorporated (ARINC), developing training programs and  
17 policy for Advanced Satellite Communications Management Systems and  
18 general communications planning for the Department of Defense.

19 **Q: Have you previously testified before the Indiana Utility Regulatory**  
20 **Commission ("IURC")?**

21 **A:** Yes, I have testified in a number of dockets before the IURC on various

1 telecommunications and energy issues. With regard to the telecommunications  
2 industry, I've testified on matters related to access charge reform, the Indiana  
3 Universal Service Fund (IUSF), the proposed Indiana Low-Income Assistance  
4 Program (ILAP), and the designation of Competitive Eligible  
5 Telecommunications Carriers (C-ETCs) in Indiana.

6 **Q: What did you do to prepare to testify in this case?**

7 A: I reviewed the Application for a Certificate of Territorial Authority ("CTA") for  
8 Communications Service Providers filed by TracFone Wireless, Inc.  
9 ("TracFone"), supporting testimony and exhibits, and its appeals to the full  
10 Commission. I have also reviewed filings made in IURC Cause Nos. 43524 and  
11 41052-ETC- 54 involving TracFone. I also reviewed applicable sections of  
12 various Indiana statutes regarding Commercial Mobile Radio Service  
13 ("CMRS") providers' entry into Indiana's communications markets.  
14 Additionally, I've met with representatives from TracFone to gain a better  
15 understanding of the company's prepaid service offerings and related matters.  
16 Finally, I have discussed this case with other OUCC staff members.

17 **Q: What is the purpose of your testimony?**

18 A: My testimony will comment upon the certification process for a communication  
19 service provider ("CSP") in Indiana and the obligations a CSP assumes when it  
20 receives a CTA from the IURC. Those obligations include the payment of all  
21 applicable fees such as those associated with the Indiana Telephone Relay  
22 Access Corporation for the Hearing and Speech-Impaired ("INTRAC"), 911

1 service and the Indiana Universal Service Fund ("IUSF"). The payment of such  
2 fees have a direct impact upon such matters as consumer safety as well as the  
3 consumer's ability to receive critical services through the telecommunications  
4 system. I recommend IURC approval of TracFone's requested CTA,  
5 conditioned upon an adequate commitment by TracFone that it will abide by all  
6 applicable legal requirements pertaining to the provision of communications  
7 services in Indiana, including the payment of all applicable fees required of an  
8 Indiana certificated carrier.

## II. TRACFONE WIRELESS, INC.

9 **Q: What is TracFone requesting from the Commission in Docket No. 43732?**

10 **A:** By completing the application, TracFone is requesting the IURC issue the  
11 company a CTA to provide communications services to customers in Indiana.

12 **Q: Please describe TracFone Wireless, Inc.**

13 **A:** TracFone is incorporated under the laws of the State of Delaware with corporate  
14 offices located at 9700 N.W. 112<sup>th</sup> Avenue, Miami, Florida.<sup>1</sup> The company's  
15 website states that TracFone is "America's largest and number one prepaid cell  
16 phone provider in the U.S." The website continues: "With over 11 million  
17 subscribers, TracFone Wireless has been the undisputed leader in prepaid  
18 wireless since its founding in 1996. TracFone Wireless is a subsidiary of  
19 América Móvil S.A.B. de C.V. ("AMX"). América Móvil is the fourth largest

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<sup>1</sup> *Verified Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of Offering Lifeline Service to Qualified Households*, IURC Docket No. 41052 ETC 54, filed June 22, 2009, page 2, lines 2-3

1 cell phone company in the world and the largest in all of the Americas with  
2 more than 182 million cell phone subscribers.”<sup>2</sup> The company began providing  
3 service in Indiana in May, 1997 as a for-profit foreign corporation and remains  
4 as an active company with the Secretary of State’s office.<sup>3</sup>

5 **Q: Please describe América Móvil?**

6 A: With corporate offices located at Lago Alberto 366, Colonia Anahuac, Mexico,  
7 América Móvil claims to have operations in 18 countries in the Americas, more  
8 than 182 million mobile customers and over 3.8 million fixed lines in Central  
9 America and the Caribbean.<sup>4</sup>

10 As a subsidiary, TracFone’s 11 million subscribers contributed a total of 4.8%  
11 of América Móvil’s total revenue according to the company’s 2008 Annual  
12 Report.<sup>5</sup>

13 **Q: How does TracFone provide service to Indiana customers?**

14 A: According to the company’s original petition,<sup>6</sup> “In Indiana, TracFone obtains  
15 service from the following underlying carriers: Alltel, AT&T Mobility,  
16 Centennial Wireless, T-Mobile, US Cellular and Verizon Wireless”, then resells

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<sup>2</sup> <http://www.tracfone.com/about.jsp?nextPage=about.jsp&task=about>, accessed June 30, 2009

<sup>3</sup> Information obtained from [https://secure.in.gov/sos/bus\\_online/online\\_corps](https://secure.in.gov/sos/bus_online/online_corps) on or about August 1, 2009. See also, TracFone’s response to OUCC Data Request Set No. 3, Question No. 55, on November 25, 2009.

<sup>4</sup> Information obtained from [http://www.americamovil.com/index\\_eng.htm](http://www.americamovil.com/index_eng.htm).

<sup>5</sup> Downloadable at <http://www.americamovil.com/docs/reportes/eng/2008.html>

<sup>6</sup> *Verified Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of Offering Lifeline Service to Qualified Households*, IURC Docket No. 41052 ETC 54, filed June 22, 2009, page 2, lines 19-20.

1 the service from the six underlying carriers as a pre-paid service utilized on  
2 TracFone-trademarked handsets. One of these carriers – Centennial – is a  
3 designated C-ETC provider in Indiana.

4 **Q: What services does TracFone provide to Indiana customers?**

5 A: TracFone provides prepaid wireless service to customers by offering a range of  
6 cell phones from basic models through advanced handsets manufactured by  
7 Motorola, Nokia, LG, Kyocera and Samsung and sold through major discount  
8 and retail stores. The handsets range in price from \$19.00 to \$49.00 and come  
9 with a variety of features, including Bluetooth technology, high-speed internet  
10 access, texting and VGA video capability. These handsets, coupled with the  
11 price for prepaid wireless minutes, constitute the cost for TracFone's provided  
12 services.

### **III. THE INDIANA CERTIFICATION PROCESS**

13 **Q: What must CSPs do to become a certificated carrier in Indiana?**

14 A: Pursuant to Indiana Code ("I.C.") 8-1-32.5-6, a CSP seeking to offer  
15 communications service to Indiana customers after June 30, 2009, must apply to  
16 the IURC for a Certificate of Territorial Authority (CTA). Providers which  
17 have an existing CTA, a Certificate of Franchise Authority (CFA) or a  
18 Certificate of Public Convenience and Necessity (CPCN) issued prior to July 1,  
19 2009, which remains in effect on July 1, 2009, are not required to submit a new  
20 application for operating authority under I.C. 8-1-32.5 as long as the previously  
21 issued certificate remains in effect.



1   **Q:   Are CMRS providers considered Communications Service Providers in**  
2   **Indiana?**

3   **A:**   Yes. I.C. 8-1-32.5-4 defines a "Communications Service Provider" as:

4                   A person or entity that offers communications service to customers  
5                   in Indiana, without regard to the technology or medium used by the  
6                   person or entity to provide the communications service. The term  
7                   includes a provider of commercial mobile service (as defined in 47  
8                   U.S.C. 332).

9   **Q:   Should TracFone be considered a CMRS provider and therefore a CSP?**

10  **A:**   Yes. According to I.C. 36-8-16.5-5, the term "CMRS" refers to:

11                   ...[T]he commercial mobile radio service (as defined by 47 U.S.C.  
12                   332(d)(1)). The term includes the following:

13                   (1) Services commonly referred to as wireless.

14                   (2) Services provided by a wireless real time two-way voice  
15                   communication device, including radio-telephone communications  
16                   used in:

17                   (A) cellular telephone service;

18                   (B) personal communications service; or

19                   (C) the functional or competitive equivalent of a radio-  
20                   telephone communications line used in:

21                   (i) cellular telephone service;

22                   (ii) a personal communications service; or

23                   (iii) a network radio access line.

24                   (1) Any other wireless service that provides the user with direct  
25                   access to a PSAP through the placement of a 911 call.

26                   I.C. 36-8-16.5-6 further defines a "CMRS provider" as a person or entity  
27                   that provides CMRS service. The term includes facilities based and non-  
28                   facilities based resellers.

**IV. OBLIGATIONS OF CERTIFICATED CARRIERS IN INDIANA**

1   **Q:   Does a company assume specific obligations when certificated to provide**  
2   **communications services in Indiana?**

3   **A:   Absolutely. Any entity certificated by the IURC to provide communications**  
4   **services in Indiana is required to abide by all applicable legal requirements for**  
5   **provisioning such communications services.**

6   **Q:   Do these specific obligations apply to CMRS providers, specifically a**  
7   **prepaid wireless service provider, when certificated to provide**  
8   **communications services in Indiana?**

**A:   Yes. As stated in the final order issued by the IURC in Cause No. 43788 for**  
    **Telava Mobile, Inc.<sup>7</sup> (another pre-paid wireless service provider), applicants**  
    **approved for a CSP CTA are required to abide by all applicable legal**  
    **requirements pertaining to the provision of communications services including,**  
    **but not limited to, establishing and maintaining contact with the Indiana**  
    **Telephone Relay Access Corporation for the Hearing and Speech Impaired**  
    **(InTRAC), the Indiana 211 Partnership, counties and Public Service Answering**  
    **Points (PSAPs) covering areas in which the company provides local exchange**  
    **service. Certificated carriers are also required to pay all applicable fees**  
    **including but not limited to fees associated with InTRAC, 911 and the Indiana**  
    **Universal Service Fund (IUSF).**

9   **Q:   What obligations are assumed by a certificated carrier in Indiana with**  
10  **regard to InTRAC?**

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<sup>7</sup>   *Application of Telava Mobile, Inc. for a Certificate of Territorial Authority to Provide Communications Service as Defined in Ind. Code § 8-1-32.5-3 within the State of Indiana, Final Order issued November 12, 2009.*

1     A:     Any certificated carrier in Indiana is required to establish and maintain contact  
2           with InTRAC and pay all fees in accordance with I.C. § 8-1-2.8. IC 8-1-2.8-11  
3           defines the IURC jurisdiction in the matter by requiring each LEC, beginning  
4           on June 1, 1991, to:

5                     ...[I]mpose a monthly surcharge in the amount of five cents  
6                     (\$0.05) on each residential and business line (or line equivalent) of  
7                     its customers to fund and recover costs for developing and  
8                     providing dual party relay services that may include in appropriate  
9                     circumstances in the sole discretion of the InTRAC providing  
10                    telecommunications devices to hearing impaired and speech  
11                    impaired persons.

12    **Q:     How does a certificated carrier in Indiana collect the InTRAC fee from its**  
13       **customers?**

14    A:     IC 8-1-2.8-14 mandates a surcharge be collected on the regular monthly bill the  
15           LEC sends to each of its customers. The surcharge may be separately identified  
16           on customers' bills as a special surcharge for the provision of services, including  
17           telecommunications devices, to hearing impaired and speech impaired persons.

18    **Q:     Has TracFone complied with this requirement?**

19    A:     Pre-paid service providers such as TracFone do not send out billing statements  
20           to customers on a monthly basis since all services are purchased in advance.  
21           TracFone accordingly takes the position that it is not required to make any  
22           payments to INTRAC.<sup>8</sup> The OUCC submits that a customer's prepayment for  
23           wireless services does not exonerate TracFone's responsibility to collect such

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<sup>8</sup> See TracFone's Response to OUCC Data Request Set No. 3, Question No. 56, November 25, 2009.

1 fees from its customers at the time of such prepayment.

2 **Q: What obligations are assumed by a certificated carrier in Indiana with**  
3 **regard to the Indiana 211 Partnership?**

4 A: Any company awarded status as a certificated carrier in Indiana is required to  
5 establish and maintain contact with the 211 Partnership to coordinate proper  
6 switch translations for the 211 dialing code described in I.C. § 8-1-19.5 to  
7 ensure customers can dial 211 when desired or, in the case of a reseller of local  
8 exchange service, to verify the facilities-based carrier has provided 211 service.

9 **Q: Has TracFone complied with this requirement?**

10 A: TracFone has indicated in a response to an OUCC Data Request that the  
11 company relies on its underlying wholesale facilities-based wireless service  
12 provider to handle matters regarding 211-related requirements. However, it  
13 further indicates that it will contact the Indiana 211 Partnership upon being  
14 designated an ETC, to ensure information about its Lifeline program will be  
15 available to those who call 211 for information and referrals regarding health  
16 and human services.<sup>9</sup>

17 **Q: What obligations are assumed by a certificated carrier in Indiana with**  
18 **regard to county and Public Service Answering Point ("PSAP") 911**  
19 **service?**

20 A: Companies certificated by the Commission to provide service in Indiana are  
21 mandated to provide notice to counties and PSAPs covering areas in which the

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<sup>9</sup> See TracFone's Response to OUCC Data Request Set No. 3, Question No. 57, November 25, 2009.

1 company provides local exchange service when the offering of the services  
2 commences in areas served by the PSAP. This is done to facilitate the  
3 continued operation of the enhanced emergency telephone system defined and  
4 described in I.C. § 36-8-16, *et seq.*, and to provide PSAP database updates to  
5 applicable 911 Service providers (required under I.C. § 36-8-16-16). Indiana  
6 code also requires CMRS providers to remit to the Indiana Wireless Enhanced  
7 9-1-1 Advisory Board fees collected from customers, which the board uses to  
8 develop and administer the wireless 911 network.<sup>10</sup>

9 **Q: Has TracFone complied with this requirement?**

10 A: The issue of fee payment is currently being addressed by the Commission in  
11 Cause No. 43524 as to TracFone.

12 **Q: What obligations are assumed by a certificated carrier in Indiana with**  
13 **regard to the Indiana Universal Service Fund (IUSF)?**

14 A: The language at page 9, paragraph 11, of the approved Settlement Agreement in  
15 IURC Cause No. 42144<sup>11</sup> explains that contributions to the IUSF are not tied to  
16 the Eligible Telecommunications Carrier (ETC) status of the contributor. The  
17 obligation to pay into the fund applies to every Indiana intrastate  
18 telecommunications service provider receiving revenue from retail sales. ETC

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<sup>10</sup> I.C. 36-8-16.5-30.5 directs CMRS providers to "collect and remit to the board under section 36 of this chapter fees from its prepaid subscribers in a total amount equal to the fee amount multiplied by the number of active prepaid subscriber accounts on the last day of each calendar month."

<sup>11</sup> *In the Matter of the Investigation on the Commission's own Motion under Indiana Code § 8-1-2-72, into any and all Matters related to the Commission's Mirroring Policy Articulated in Cause No. 40785 and the Effects of the FCC's MAG Order on such Policy, Access Charge Reform, Universal Service Reform, and High Cost or Universal Service Funding Mechanisms relative to Telephone and Telecommunications Services within the State of Indiana*, IURC Cause No. 42144, Final Order issued March 17, 2004.

1 status is required for a company seeking high cost support from the IUSF.  
2 Payment of all required assessments into the IUSF is based on the “net billed  
3 intrastate retail telecommunications revenue,” pursuant to the Implementation  
4 Guidelines attached to the Commission’s July 25, 2007 Docket Entry in Cause  
5 No. 42144 and any other future IUSF-related requirements, rules, and/or  
6 procedures. This payment obligation as to certificated carriers, including  
7 wireless service providers, has been upheld on appeal.<sup>12</sup>

8 **Q: Has TracFone complied with this requirement?**

9 A: No, it has not. In its response to an OUCC Data Request,<sup>13</sup> TracFone maintains  
10 it is not subject to an IUSF assessment because it does not have any billed  
11 intrastate retail telecommunications revenue, since it does not render bills to its  
12 customers where services are purchased in advance. The OUCC submits that  
13 TracFone’s stance on this issue argues form over substance. TracFone does  
14 indeed “bill” its customers for service at the time TracFone’s services are  
15 purchased by the customer and it is therefore subject to IUSF-related  
16 requirements.

17 **Q: What obligations are assumed by a certificated carrier in Indiana with**  
18 **regard to the Indiana Underground Plant Protection Service (“811”)?**

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<sup>12</sup> See, Nextel West Corp. v Indiana Utility Regulatory Comm., 831 N.E. 2d 134 (2005); transfer denied 860 N.E. 2d 588.

<sup>13</sup> *TracFone Wireless, Inc.’s Response to Office of Utility Consumer Counselor’s Data Request Set No. 3*, Response to Question No. 58, submitted to the OUCC on November 25, 2009. Information for the response was provided by Mr. Jose Fuentes, Director of Government Relations, TracFone Wireless, Inc..

1     A:     Any company awarded status as a certificated carrier in Indiana is required to  
2           establish and maintain contact with 811 in accordance with I.C. § 8-1-26.

3     **Q:     Has TracFone complied with this requirement?**

4     A:     TracFone has repeatedly stated the company does not own, maintain, or operate  
5           infrastructure in Indiana in its provision of communications service to Indiana  
6           customers. Consequently, the requirements of I.C. § 8-1-26 do not appear to  
7           apply to TracFone. However, if in the future TracFone were to invest in Indiana  
8           by installing, maintaining, and operating communications infrastructure –  
9           specifically underground infrastructure – then the requirements of I.C. § 8-1-26  
10          would apply.

11    **Q:     What obligations are assumed by a certificated carrier in Indiana with**  
12       **regard to call blocking?**

13    A:     Any company receiving certificated carrier status from the IURC to operate in  
14           Indiana is required to offer per-call or per-line blocking for law enforcement  
15           and crisis intervention agencies, pursuant to I.C. § 8-1-2.9-2(a).

16    **Q:     Has TracFone complied with this requirement?**

17    A:     Handsets used by cellular systems typically display the calling number for  
18           incoming calls unless the caller identification is blocked or unidentifiable by the  
19           carrier. In the same manner, when dialing a call from a cellular handset, caller  
20           identification information may also be available for view by the receiving party  
21           if they have a cellular handset or – in the case of a landline location – Caller ID.  
22           Blocking the caller's identification information on a wireless handset is

1 generally an option available in the set-up or options menu of the handset.  
2 Because the caller can, in effect, initiate blocking of their own identification  
3 information for outgoing calls, the OUCC believes the requirements of I.C. § 8-  
4 1-2.9-2(a) may need to be thoughtfully re-examined for applicability and  
5 potential modification specific to CMRS providers.

#### V. OUCC RECOMMENDATIONS

6 **Q: What does the OUCC recommend?**

7 **A:** For the reasons discussed in this testimony, the OUCC recommends the  
8 Commission approve the petition by TracFone for an Indiana Communications  
9 Service Provider Certificate of Territorial Authority. However, as a condition  
10 of the approval, the OUCC recommends TracFone be required to provide  
11 documentation to the IURC that the company has complied with the payment of  
12 all applicable fees and taxes (including but not limited to INTRAC and IUSF  
13 fees) that have accrued during the time since TracFone commenced providing  
14 communications service in Indiana in 1997.

15 If TracFone is found not to be in compliance, the OUCC recommends the CTA  
16 still be granted on condition the company brings itself into compliance by  
17 paying all delinquent fees and certifying to the IURC that it will remain in  
18 compliance in the future with all Indiana laws, rules, and regulations until such  
19 time as it ceases doing business in the State. The OUCC acknowledges the  
20 issue of payment of 911 fees by TracFone remains a contested issue in IURC  
21 Docket No. 43524 and suggests the payment of that specific fee by TracFone be



1           deferred until such time as a final and unappealable order is rendered in the  
2           docket.


3           If TracFone is found to be in non-compliance with State laws, rules, and  
4           regulations with respect to paying fees and taxes and is unwilling to bring itself  
5           into compliance and remain so while it continues to provide service to Indiana  
6           residents, the OUCC recommends the Commission reject its application for a  
7           CTA and so advise the Secretary of State's office of this action and the reasons  
8           for it.

9   **Q:   Does this conclude your testimony?**

**A:**   Yes, it does.

**AFFIRMATION**

I affirm, under the penalties for perjury, that the foregoing representations are true.



---

By: Ronald L. Keen  
Indiana Office of  
Utility Consumer Counselor

1 Dec. 09  
Date